IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON

DIVISION II

STATE OF WASHINGTON, Respondent, v. JOSEPH PATRICK DORN, Appellant.	No. 37620-2-II UNPUBLISHED OPINION

Bridgewater, P.J. — Joseph Patrick Dorn appeals his conviction for one count of unlawful possession of pseudoephedrine with intent to manufacture methamphetamine. We hold that the trial court's admission of Dorn's incriminating statements did not offend the corpus delicti rule, there was sufficient evidence to convict Dorn of the crime charged, and the late entry of findings of fact and conclusions of law did not prejudice him. We affirm.

Facts

Joseph Dorn came to the attention of Pierce County Sheriff's deputies during a routine review of local pharmacies' sales logs regarding pseudoephedrine purchases. On July 19, 2007, the sheriff's department conducted an undercover investigation of pseudoephedrine purchases in the Bonney Lake area. Deputies observed Dorn purchase pseudoephedrine at a pharmacy in Bonney Lake. Deputies then followed Dorn as he visited several other pharmacies in Bonney Lake, Enumclaw, Graham, and Buckley, and purchased pseudoephedrine products. Outside of one pharmacy, Dorn threw several items into a trash can including torn up blister packs and a

receipt for batteries. Deputies continued to follow Dorn, and finally stopped and arrested him after he visited a residence where deputies had previously purchased methamphetamine.

After a search incident to arrest and being advised of his rights, the deputies interviewed Dorn. Dorn admitted to using and making methamphetamine. He admitted to making anhydrous ammonia and told deputies where he obtained the other necessary ingredients for making the methamphetamine.

Dorn told the Deputies that the pills he had purchased were in the ashtray of the truck he was driving. Dorn also admitted going to King, Pierce, and Thurston counties to purchase pseudoephedrine. Deputies searched the vehicle and found some 50 loose pseudoephedrine pills in a bag in the ashtray. Behind the truck's bench seat, deputies also found a length of plastic tubing of a type used in methamphetamine manufacturing. In Dorn's wallet, deputies found a note that said "Settle up with Ted, 1200 or oz." I RP at 96. At that time, $1,200 was the typical price for an ounce of methamphetamine. In Dorn's pants, deputies found a plastic baggy and a plastic wrapper of a type commonly used to package narcotics.

On July 20, 2007, the State charged Dorn with unlawful manufacture of a controlled substance (count I), and unlawful possession of pseudoephedrine with intent to manufacture methamphetamine (count II). Dorn filed a motion to suppress and/or dismiss, first seeking to suppress his statements to the deputies pursuant to a corpus delicti challenge, and second, to dismiss the case for lack of a prima facie case pursuant to *State v. Knapstad*, 107 Wn.2d 346, 729 P.2d 48 (1986). The Honorable Ronald Culpepper heard the motion and granted Dorn's

Knapstad motion with regard to count I, unlawful manufacture of a controlled substance, methamphetamine; and denied the motions with regard to count II, unlawful possession of pseudoephedrine with intent to manufacture methamphetamine.

For trial, the case was assigned to the Honorable Linda Lee. Dorn waived jury trial. The court found Dorn guilty on the remaining count of unlawful possession of pseudoephedrine with intent to manufacture methamphetamine. The court imposed a DOSA sentence on April 18, 2008. Dorn timely appealed.

Discussion

Corpus Delicti

Relying on the corpus delicti rule, Dorn contends that the trial court erred in admitting his incriminating statements because there was insufficient independent corroborative evidence that he possessed pseudoephedrine with the intent to manufacture methamphetamine. We disagree.

Corpus delicti means the "body of the crime" and must be proved by evidence sufficient to support the inference that there has been a criminal act. *State v. Brockob*, 159 Wn.2d 311, 327, 150 P.3d 59 (2006) (internal quotation marks and citations omitted). A defendant's incriminating statement alone is not sufficient to establish that a crime took place. *Brockob*, 159 Wn.2d at 328. The State must present other independent evidence to corroborate a defendant's incriminating statement. *Brockob*, 159 Wn.2d at 328. In other words, the State must present evidence independent of the incriminating statement that the crime a defendant described in the statement actually occurred. *Brockob*, 159 Wn.2d at 328.

In determining whether there is sufficient independent evidence under the corpus delicti rule, we review the evidence in the light most favorable to the State. *Brockob*, 159 Wn.2d at 328. The independent evidence need not be sufficient to support a conviction, but it must provide prima facie corroboration of the crime described in a defendant's incriminating statement. *Brockob*, 159 Wn.2d at 328. "Prima facie corroboration of a defendant's incriminating statement exists if the independent evidence supports a logical and reasonable inference of the facts sought to be proved." *Brockob*, 159 Wn.2d at 328 (internal quotation marks and citations omitted).

In addition to corroborating a defendant's incriminating statement, the independent evidence must be consistent with guilt and inconsistent with a hypothesis of innocence. *Brockob*, 159 Wn.2d at 329. If the independent evidence supports reasonable and logical inferences of both criminal agency and noncriminal cause, it is insufficient to corroborate a defendant's admission of guilt. *Brockob*, 159 Wn.2d at 329.

In *Brockob*, store security officers observed the defendant take many packages of Sudafed while shopping at a Tacoma Fred Meyer store. The defendant walked around the store removing the tablets from their packaging and placed the empty packages on a shelf in the garden department. When he left the store without paying for the cold medications, store security detained him and called police. *Brockob*, 159 Wn.2d at 318-19. After being advised of his rights, the defendant admitted that he was stealing the Sudafed for someone else who was going to use it to make methamphetamine. *Brockob*, 159 Wn.2d at 319. The defendant was charged and convicted of unlawful possession of methamphetamine and/or ephedrine with intent to

manufacture methamphetamine. *Brockob*, 159 Wn.2d at 319-20. Brockob and two other cases were transferred to the Supreme Court to determine whether there was independent evidence in each case sufficient to corroborate the defendant's incriminating statements to police under the corpus delicti rule. *Brockob*, 159 Wn.2d at 317.

In the *Brockob* case our Supreme Court applied the above analysis and held that the State's evidence was insufficient under the corpus delicti rule to admit the defendant's incriminating statements. The defendant "simply possessed a quantity of Sudafed." *Brockob*, 159 Wn.2d at 332. Although he told police that he was stealing the Sudafed for someone else to make methamphetamine, the State had no independent evidence to support this statement other than the testifying officer's bare assertion that Sudafed is used to manufacture methamphetamine. The court relied on the fact that the defendant "did not possess anything else used in the manufacturing process." *Brockob*, 159 Wn.2d at 332. The Supreme Court held that it is not reasonable to infer that a person who steals between 15 and 30 packages of Sudafed intends to manufacture methamphetamine if there is no independent evidence to support such an inference. Thus, "the State's independent evidence proved only that [the defendant] intended to steal Sudafed." *Brockob*, 159 Wn.2d at 332.

Dorn argues that the same is true here; that the mere possession of a quantity of pseudoephedrine is not itself sufficient independent evidence supporting the crime for which he was charged—possession of pseudoephedrine with intent to manufacture methamphetamine. But notably, *Brockob* cited with approval the test articulated in a *State v. Moles*, 130 Wn. App. 461,

123 P.3d 132 (2005), *review denied*, 157 Wn.2d 1019 (2006), which stated "'[b]are possession of a controlled substance is not enough to support an intent to manufacture conviction; *at least one additional factor*, suggestive of intent, must be present.'" *Brockob*, 159 Wn.2d at 337 (quoting *Moles*, 130 Wn. App. at 466 (emphasis added in *Brockob*). Both *Brockob* and *Moles* were addressing a defendant's challenge to the sufficiency of the evidence. But, as noted above, evidence in the present context is similarly taken in the light most favorable to the State. *Brockob*, 159 Wn.2d at 328; *see also State v. Whalen*, 131 Wn. App. 58, 63, 126 P.3d 55 (2005) (bare possession of pseudoephedrine is not enough to prima facie establish the corpus delicti for an intent to manufacture conviction; at least one additional factor, suggestive of intent, must be present).

Here, officers observed Dorn go to several different drugstores in succession and purchase pseudoephedrine products at those stores.[1] By the time officers arrested Dorn, he had removed the pills from their boxes and from the blister packaging. Police observed Dorn discard that packaging in a trash can outside one of the drug stores and retrieved it. When the officers searched Dorn incident to arrest, they found a note that promised another person $1,200 or an "ounce." I RP at 97. In the truck Dorn was driving, the officers also found a length of rubber tubing consistent with tubing used in the manufacture of methamphetamine. In Dorn's pocket the officers found baggies of a type commonly used to package narcotics. This evidence, and all the reasonable and logical inferences that can be drawn therefrom, constitutes a prima facie case for

[1] It is illegal to purchase more than 2 packages of pseudoephedrine in a 24-hour period. RCW 69.43.110(2).

possession of pseudoephedrine with intent to manufacture. Consequently, we hold that there is sufficient corpus delicti of the crime independent of Dorn's statements, and thus the trial court did not err in admitting Dorn's statements.

Sufficiency

Dorn next contends that the State failed to prove that he possessed the pseudoephedrine with the *intent* to manufacture methamphetamine. We disagree.

In reviewing a claim of insufficient evidence, we view the evidence in the light most favorable to the State and examine whether any rational trier of fact could have found the essential elements of the crime beyond a reasonable doubt. *Brockob*, 159 Wn.2d at 336. Determinations of credibility are for the fact finder and are not reviewable on appeal. *Brockob*, 159 Wn.2d at 336.

As discussed above, in addition to possession of an illegal quantity of pseudoephedrine, the State must show at least one additional factor suggestive of intent in order to meet the sufficiency requirement. *Brockob*, 159 Wn.2d at 337; *Moles*, 130 Wn. App. at 466. As described above, Dorn's intent to manufacture methamphetamine may be reasonably inferred from the facts taken together. Additionally, when Dorn was arrested he had removed some 50 pills from their blister packs. The *Moles* court held that the fact that many pills had been removed from their blister packs led to "the only plausible inference: that the defendants were in the process of preparing the pseudoephedrine for the first stage of the manufacturing process." *Moles*, 130 Wn. App. at 466. The *Moles* court held that fact alone was sufficient to support the jury's finding of intent to manufacture. *Moles*, 130 Wn. App. at 466.

Moreover, in *State v. Missieur*, 140 Wn. App. 181, 165 P.3d 381 (2007), Division One held that when a suspect has gone so far as to possess not only pseudoephedrine but also at least

one other distinctive ingredient or manufacturing accessory, it is reasonable to infer that he is planning to personally manufacture methamphetamine even though it is also possible that he is hoping only to become a supplier of ingredients. *Missieur*, 140 Wn. App. at 189. Here, when police arrested Dorn they found tubing of the type used in methamphetamine manufacturing in the cab of the truck Dorn was driving. The presence of this normally innocuous object in this context, however, suggests it is a "manufacturing accessory" and supports the inference of intent to manufacture. *See Missieur*, 140 Wn. App. at 189; *see also Brockob*, 159 Wn.2d at 321, 339-40 (combination of unused coffee filters and excessive amount of ephedrine found in car supported inference of methamphetamine manufacturing in consolidated case).

In addition, Dorn admitted that he used methamphetamine; that he made methamphetamine; that he made anhydrous ammonia, and that he got the dry ice he needed to make it from Marty's on River Road or from Safeway in Yelm; and that he purchased lithium batteries from the local Ace Hardware. As to other chemicals that he used in the manufacturing process, Dorn stated that he purchased them from a variety of locations.

When Dorn's illegal purchase of pseudoephedrine is considered with the fact that he had removed 50 pills from blister packages, along with his admissions of manufacturing methamphetamine, there was sufficient evidence to support the inference of guilt as to the element that he intended to manufacture methamphetamine. We hold that the evidence viewed in the light most favorable to the State is sufficient to establish Dorn's intent to manufacture methamphetamine.

Written Findings and Conclusions

Dorn next contends that the trial court failed to enter written findings of fact and conclusions of law following his bench trial, he was prejudiced thereby, and thus reversal is required; or at least remand is required for entry of written findings and conclusions. We disagree.

Court rules require that written findings of fact and conclusions of law be entered following a bench trial. *See* CrR 6.1(d); *State v. Head*, 136 Wn.2d 619, 621-22, 964 P.2d 1187 (1998). Where such written findings and conclusions are not entered, the appropriate remedy is to remand for such entry. *Head*, 136 Wn.2d at 624. But in this case, written findings and conclusions *were filed late*, on October 31, 2008, while the appeal was pending. *See* CP at 75-79. We echo the view of Division Three that this is a "bad practice." *State v. Garcia*, 146 Wn. App. 821, 826, 193 P.3d 181, 183 (2008) (citing *State v. Cannon*, 130 Wn.2d 313, 329, 922 P.2d 1293 (1996)), *review denied*, ___ Wn.2d ___ (2009). When the findings and conclusions are presented many months after the trial, the trial judge is put in the difficult position of trying to remember his or her essential findings and the reasons for a decision. *Garcia*, 146 Wn. App. at 826. Moreover, such late findings increase the potential for criticism that they are tailored to avoid reversal when, as here, they are presented after the initial appellate briefing. *Garcia*, 146 Wn. App. at 826.

Nonetheless, "findings and conclusions may be entered even while an appeal is pending if the defendant is not prejudiced by their entry." *Garcia*, 146 Wn. App. at 826 (citing *Cannon*, 130

Wn.2d at 329); *see also Head*, 136 Wn.2d at 624-25 (reviewing court will not infer prejudice from delay in entry of written findings and conclusions; burden is on defendant to prove actual prejudice from such late entry). The *Garcia* court held that there was no showing of prejudice where the late filing "mirror[ed] the court's oral findings and conclusions." *Garcia*, 146 Wn. App. at 826. That is the case here. The written findings and conclusions filed on October 31, 2008, are a near verbatim reproduction of the trial court's March 12, 2008, oral findings, conclusions, and decision that Dorn was guilty of unlawful possession of pseudoephedrine with intent to manufacture methamphetamine. As there is no improper tailoring of the findings and conclusions to meet issues raised in Dorn's appeal, we hold that there is no showing of prejudice to Dorn by the delayed entry of the findings and conclusions. No reversal or remand is warranted.

Affirmed.

A majority of the panel having determined that this opinion will not be printed in the Washington Appellate Reports, but will be filed for public record pursuant to RCW 2.06.040, it is so ordered.

Bridgewater, J.

We concur:

Armstrong, J.

Hunt, J.